

City of Manchester
New Hampshire

In the year Two Thousand and Twenty-One

AN ORDINANCE

“Amending the Code of Ordinances of the City of Manchester Chapter 54: Storm Water to Title V: Public Works.”

Be it Ordained, by the Board of Mayor and Aldermen of the City of Manchester, as follows:

CHAPTER 54: STORM WATER

Section

- 54.01 Purpose
- 54.02 Definitions
- 54.03 Administration
- 54.04 Prohibited discharges
- 54.05 Applicability
- 54.06 General application and approval procedures
- 54.07 Exemptions
- 54.08 Waivers
- 54.09 Industrial activity discharges
- 54.10 Access and inspections of properties and facilities
- 54.11 Notification of accidental discharges and spills
- 54.12 Violations, enforcement and penalties

City of Manchester *New Hampshire*

In the year Two Thousand and Twenty-One

AN ORDINANCE

§ 54.01 PURPOSE.

The purpose of this chapter is to:

(A) Protect, maintain, and enhance the environment of the City of Manchester, New Hampshire and the public health, safety and the general welfare of the citizens of the city, by controlling discharges of pollutants to the city's storm water system and surface waters and to maintain and improve the quality of the receiving waters into which the storm water outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the city.

(B) Enable the City of Manchester to comply with the latest version of the United States Environmental Protection Agency (EPA) National Pollution Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4) (MS4 Permit) and applicable regulations, 40 CFR §122.26 for storm water discharges.

(C) Allow the City of Manchester to exercise the powers granted by the State of New Hampshire through applicable statute to:

(1) Exercise general regulation over the planning, location, design, construction, and operation and maintenance of storm water facilities, culverts, drainage ditches and stream crossings in the City, whether or not owned and operated by the City;

(2) Adopt any regulations deemed necessary to accomplish the purposes of this ordinance, including the adoption of a system of fees for services and permits;

(3) Establish standards to regulate the quantity of storm water discharged and to regulate storm water contaminants to protect water quality;

(4) Review and approve plans for storm water management in proposed developments and redevelopments that disturb land equal to or greater than thresholds outlined in §54.05 herein ;

(5) Issue permits for storm water discharges, or for the construction, alteration, extension, or repair of storm water facilities;

(6) Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, or condition of the permit;

(7) Regulate and prohibit discharges into storm water facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated;

(8) Regulate and prohibit discharges into and tampering of the City's MS4, culverts, drainage ditches and stream crossings;

(9) Regulate the storage and use of salt to protect water quality;
and

City of Manchester *New Hampshire*

In the year Two Thousand and Twenty-One

AN ORDINANCE

(10) Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of storm water contamination, whether public or private.

§54.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BEST MANAGEMENT PRACTICES. Physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water, that have been approved by the City of Manchester, and that have been incorporated by reference into the Storm Water Regulations as if fully set out therein.

COMBINED SEWER DRAINAGE SYSTEM. A single pipe conveyance system intended to receive both sewage and storm or surface water.

CONTAMINANT. Any physical, chemical, biological, or radiological substance or matter in water.

DIRECTOR OF PUBLIC WORKS. The Chief Administrator of the Department of Public Works who is authorized to assign Highway/DPW staff to oversee the implementation and enforcement of the Storm Water Regulations and the City of Manchester's Storm Water Ordinance.

DISCHARGE. Dispose, deposit, spill, pour, inject, seep, dump, leak or place by any means, or that which is disposed, deposited, spilled, poured, injected, seeped, dumped, leaked or placed by any means including any direct or indirect entry of any solid or liquid matter into the Municipal Separate Storm Sewer System.

ENVIRONMENTAL PROTECTION DIVISION (EPD). A division of the Department of Public Works for the City of Manchester responsible for the treatment of wastewater and implementation of the City's Stormwater Management Program under EPA's NPDES Program.

HIGHWAY DIVISION. The Highway Division of the Department of Public Works for the City of Manchester responsible for the operation and maintenance of the City's streets.

ILLICIT CONNECTIONS. Illegal and/or unauthorized connections to the municipal separate storm water system whether or not such connections result in discharges into that system. "Illegal Connection" means either of the following:

(1) Any pipe, open channel, drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system, regardless of whether such pipe, open channel, drain or conveyance has been previously allowed, permitted, or approved by an authorized enforcement agency; or

(2) Any pipe, open channel, drain or conveyance connected to the municipal separate storm sewer system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

City of Manchester *New Hampshire*

In the year Two Thousand and Twenty-One

AN ORDINANCE

ILLICIT DISCHARGE. Any discharge to the Municipal Separate Storm Sewer System, culverts, drainage ditches and stream crossings that is not composed entirely of storm water and not specifically exempted under the Storm Water Regulations.

LAND DISTURBING ACTIVITY. Any activity on property that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land-disturbing activities include, but are not limited to, development, re-development, demolition, construction, reconstruction, clearing, grading, filling and excavation.

MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4). The conveyances owned or operated by the municipality for the collection and transportation of storm water, including the roads and streets and their drainage systems, catch basins, curbs, gutters, ditches, man-made channels, and storm drains.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT. A permit issued pursuant to 33 USC Section 1342(b) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

NEW DEVELOPMENT. Any construction or land alteration resulting in earth disturbances on an area that has not previously been developed to include impervious cover.

PERSON. Any and all persons, including any individual, firm or association and any city or private corporation organized or existing under the laws of this or any other state or country.

POLLUTANT. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; sediment; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.

POLLUTION. The contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

PREMISES. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

City of Manchester

New Hampshire

In the year Two Thousand and Twenty-One

AN ORDINANCE

REDEVELOPMENT. Any construction, land alteration, or improvement of a site that does not meet the definition of new development.

STATE WATERS. Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the State of New Hampshire which are not entirely confined and retained completely upon the property of a single person.

STORM WATER. Storm water runoff, snow melt runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration and drainage.

STORM WATER APPEALS COMMITTEE. A three-member committee consisting of the Director of the Department of Public Works, an engineer from a private engineering firm and an engineer from the Department of Public Works.

STORM WATER MANAGEMENT. The programs to maintain quality and quantity of storm water runoff to pre-development levels.

STORM WATER MANAGEMENT FACILITIES. The drainage structures, conduits, ditches, combined sewers, sewers, and all device appurtenances by means of which storm water is collected, transported, pumped, treated or disposed of.

STORM WATER MANAGEMENT PLAN. The set of drawings and other documents that comprise all the information and specifications for the programs, drainage systems, structures, Best Management Practices, concepts and techniques intended to maintain or restore quality and quantity of storm water runoff to pre-development levels.

STORM WATER POLLUTION PREVENTION PLAN (SWPPP). A plan that clearly describes appropriate control measures that include a description of all pollution control measures (i.e., Best Management Practices) that will be implemented as part of the construction activity to control pollutants in storm water discharges and describes the interim and permanent stabilization practices for the site.

STORM WATER REGULATIONS. A supplement to the Storm Water Ordinance that includes additional conditions and requirements. Copies are available at the Department of Public Works and the Office of the City Clerk.

STORM WATER RUNOFF. Flow on the surface of the ground, resulting from precipitation and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

STORM WATER UTILITY. The Department of Public Works and its duly authorized agents created by ordinance of the City to administer the Storm Water Management Ordinance, and other Storm Water Regulations adopted by the City.

STRUCTURAL BEST MANAGEMENT PRACTICES. Devices that are constructed to provide control of storm water runoff.

STRUCTURAL STORM WATER CONTROL. A structural storm water management facility or device that controls storm water runoff and changes the

City of Manchester

New Hampshire

In the year Two Thousand and Twenty-One

AN ORDINANCE

characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

§ 54.03 ADMINISTRATION.

The Director of the Department of Public Works or his designee shall administer the provisions of this ordinance and is hereby authorized to promulgate and amend such regulations as may be necessary and convenient to effectuate the purposes and enforce the requirements of this ordinance.

§ 54.04 PROHIBITED DISCHARGES.

The specific prohibited discharges outlined in the latest version of the NPDES MS4 Permit and the Storm Water Regulations are not inclusive of all discharges prohibited by this ordinance and the Storm Water Regulations.

§ 54.05 APPLICABILITY.

- (A) No person may undertake a land disturbance activity as described below without a land disturbance permit, unless the project meets the exemptions outlined in §54.07 or a waiver is granted as outlined in the Storm Water Regulations or the project was already in process when these Regulations were adopted:
- (1) Land disturbance where there is a 15% or greater slope and where the land disturbance is greater than or equal to 1,000 square feet;
 - (2) Land disturbing activity of one half (0.5) or more acres of land;
 - (3) Land disturbing activity of less than one half (0.5) acre of land if such activity is part of a larger common plan of development that affects one half (0.5) or more acres of land;
 - (4) Land disturbing activity of less than one half (0.5) acre of land if in the discretion of the City of Manchester, such activity poses a unique threat to water, or public health or safety;
 - (5) The creation and use of borrow pits (the excavation of soils from one area to be used in another area that would meet any of the criteria in 1, 2, or 3 above).

Every owner/operator will also be required to obtain an EPA Construction General Permit from the EPA through a Notice of Intent, where applicable.

- (B) No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the MS4 or into any waters as defined in the Regulations that causes or contributes to pollution, clogging or flooding of the MS4, surface waters, culverts, drainage ditches and stream crossings.
- (C) No person shall construct, use, allow, maintain, or continue any illicit connection to the MS4, regardless of whether the connection was permissible under applicable law, regulation, or custom at the time of connection.
- (D) No person shall obstruct or interfere with the normal flow of stormwater into or out of the MS4 without prior written approval from the Director of Public Works

City of Manchester *New Hampshire*

In the year Two Thousand and Twenty-One

AN ORDINANCE

with input from the Environmental Protection Division (EPD) and Highway Division.

§ 54.06 GENERAL APPLICATION AND APPROVAL PROCEDURES.

Application and approval procedures and requirements shall be defined and included as part of the Storm Water Regulations Manual.

§ 54.07 EXEMPTIONS.

The following are exempt from obtaining a land disturbance permit.

- (1) Agricultural and forestry practices in accordance with BMPs published by the NH Department of Agriculture;
- (2) Interior alterations and exterior maintenance to existing buildings and structures;
- (3) Resurfacing and routine maintenance of pavement unless underlying and/or surrounding soil is disturbed and/or changes in surface grade or elevations are made that change the flow patterns and discharge of stormwater runoff;
- (4) Any new development or redevelopment that is granted a waiver as outlined in the Stormwater Regulations;
- (5) A project that has received an approval prior to when these Regulations were adopted;
- (6) A project that has received subdivision or site plan approval from the Planning Board, provided the project demonstrates compliance with the stormwater management performance standards, site inspection, and inspection and maintenance requirements of these regulations and the decision includes a designation as such. Where approval of compliance with these regulations is sought through the subdivision and site plan review process, include a copy of the checklist in Appendix A of the Stormwater Regulations with subdivision and site plan applications.

In cases in which the project does not demonstrate compliance with these rules and regulations, or when none of the above approvals are required, a land disturbance permit through the DPW/EPD will be required.

§ 54.08 WAIVERS.

Every applicant shall provide for Storm Water Management as required by the Storm Water Regulations, unless a written request is filed to waive this requirement. Requests to waive the Storm Water Management requirements shall be submitted to the DPW/EPD for approval as outlined in the Storm Water Regulations.

§ 54.09 INDUSTRIAL ACTIVITY DISCHARGES.

City of Manchester

New Hampshire

In the year Two Thousand and Twenty-One

AN ORDINANCE

All operators of landfills, hazardous waste treatment, disposal, and recovery facilities and industrial facilities are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) 42, USC § 11023, and industrial facilities that the City determines are contributing a pollutant load to the Municipal Separate Storm Sewer System, which are sources of storm water discharges associated with industrial activity shall comply with the requirements outlined in the City's Storm Water Regulations.

§ 54.10 ACCESS AND INSPECTION OF PROPERTIES AND FACILITIES.

(A) The representative of the Department of Public Works shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this ordinance.

(B) If a property or facility has security measures in force, which require proper identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to representatives of the Department of Public Works.

(C) The owner or operator shall allow the representative of the Department of Public Works ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of any records that are required under the conditions of this ordinance and Storm Water Regulations and/or a National Pollutant Discharge Elimination System Permit to discharge storm water.

(D) The Department of Public Works shall have the right to set up on any property or facility such devices as are necessary in the opinion of the Department of Public Works to conduct monitoring and/or sampling of flow discharges.

(E) The Department of Public Works may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the Department of Public Works. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his/her own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.

(F) Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of the Department of Public Works and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.

(G) Unreasonable delays in allowing the Department of Public Works access to a facility shall be a violation of this ordinance.

(H) If the Department of Public Works has been refused access to any part of the premises from which storm water is discharged, and the Department of Public Works is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is an need to inspect and/or sample as part of a routine inspection and sampling program designated to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the Department of Public Works may seek issuance of a search warrant from any court of competent jurisdiction.

City of Manchester *New Hampshire*

In the year Two Thousand and Twenty-One

AN ORDINANCE

§ 54.11 NOTIFICATION OF ACCIDENTAL DISCHARGES AND SPILLS.

Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or non-storm water discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into storm water, the City of Manchester's separate storm sewer system, State Waters, or Waters of the U.S., said person shall immediately notify the DPW/EPD and take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge.

§ 54.12 VIOLATIONS, ENFORCEMENT AND PENALTIES.

(A) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of the City's Storm Water Ordinance or the Storm Water Regulations. Any person who has violated or continues to violate these provisions may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

In the event the violation constitutes an immediate danger to public health or public safety, the Department of Public Works is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The Department of Public Works is authorized to seek costs of the abatement as outlined in §54.11(F).

(B) Whenever the Department of Public Works finds that a violation of this ordinance or the Regulations has occurred, the Public Works Director or designee may order compliance by written Notice of Violation. The Notice of Violation shall contain:

- (1) The name and address of the alleged violator;
- (2) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- (3) A statement specifying the nature of the violation;
- (4) A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;
- (5) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed; and,
- (6) A statement that the determination of violation may be appealed to the Department of Public Works Storm Water Appeals Committee by filing a written notice of appeal within five (5) days of service of notice of violation.

(C) Such notice may require without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit discharges and illegal connections;

City of Manchester

New Hampshire

In the year Two Thousand and Twenty-One

AN ORDINANCE

- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- (5) Payment of costs to cover administrative and abatement costs; and,
- (6) The implementation of pollution prevention practices.
- (D) *Appeal of Notice of Violation* - Any person receiving a Notice of Violation may appeal the determination of the Department of Public Works. The appeal must be received within five (5) days from the date of the Notice of Violation. Filing of an appeal does not relieve the owner from full compliance with the remedial actions outlined in the Notice of Violation. Hearing on the appeal before the Department of Public Works, Storm Water Appeals Committee shall take place within thirty (30) days from the date of receipt of the appeal. The decision of the Storm Water Appeals Committee shall be final.
- (E) *Enforcement Measures After Appeal* - If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, then representatives of the Department of Public Works may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.
- (F) *Costs of Abatement of the Violation* - Within ten (10) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the assessment or to the amount of the assessment within fifteen (15) days of such notice. If the amount due is not paid within thirty (30) days after receipt of the notice, or if an appeal is taken, within five (5) days after a decision on said appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the City of Manchester by reason of such violation.
- (G) *Civil Penalties* - In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within two (2) days, or such greater period as the Department of Public Works shall deem appropriate, after the Director of Public Works or designee has taken one or more of the actions described above, the Public Works Director may impose a penalty not to exceed \$1,000 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.
- (H) *Criminal Penalties* - For violations of the Storm Water Ordinance or the Regulations, the Director of Public Works may issue a citation to the alleged violator requiring such person to appear in court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed \$1,000 for each day the violation has occurred, or imprisonment for up to sixty (60) days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

City of Manchester *New Hampshire*

In the year Two Thousand and Twenty-One

AN ORDINANCE

(I) *Violations Deemed a Public Nuisance* – In addition to the enforcement process and penalties provided in this ordinance any threat to public health, safety, welfare and environment and is declared and deemed a nuisance, may be abated by injunctive or other equitable relief as provided by law.

(J) *Remedies Not Exclusive* - The remedies listed in this ordinance and the Regulations are not exclusive of any other remedies available under any applicable Federal, State or local law and the City of Manchester may seek cumulative remedies.

The City of Manchester may recover attorney's fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.